CHAPTER ONE
THE NATURE OF ISLAMIC INTERNATIONAL LAW

1. Introduction

This chapter deals with some of the basic principles of Islamic international law and analyses them with the principles of public international law which have long been recognised in international relations of states. The nature of both systems of international law is discussed side by side to present both laws simultaneously and also to emphasize that even though their sources have different bases and methods of application, their aims, more or less, coincide with each other for the peaceful implementation of the rules of the international legal community and the peaceful settlement of international disputes. The chapter is also devoted into some

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1 It may be relevant to mention here that there has, historically, been a strong connection between Islamic international law and public international law. The classical writers of the latter have benefited in one way or another from the principles of the former. Francisco de Victoria (1480–1546) and Suarez (16–17th centuries) were both Spanish nationals and were educated in the same county where Islamic theories had a potential influence on culture, jurisdiction and politics. Their work on the law of nations therefore benefited from the principles of Islamic international law, especially on the law of war. Similarly, the classical writer of international law Hugo Grotius (1563–1645) who is recognised by some European writers as the father of the law of nations in Europe, was a theologian and also studied Islamic law thereby benefited from the principles of Islam, especially concerning the law of war. In this respect one may easily compare the provisions of Islamic international criminal law governing prisoners of war and the law of armed conflict with similar provisions stated in Grotius work on the law of war namely De Juri Belli ac Pacis Libri Tres: Classics of International Law, translated by Francis W. Kelsey (1925). See also Louis M. Holscher and Mahmood Rizwana, Borrowing from the Shariah: The Potential Uses of Procedural Islamic Law in the West, in Delbert Rounds (ed.), International Criminal Justice: Issues in a Global Perspective (1999), at pp. 82–96. See also Montesquieu, The Spirit of the Law, edited by Anne M. Cohler, Basia Carolyn Miller, Harold Samuel Stone (1989).

2 The revelation of Islamic law including Islamic international law must be examined and seen in conjunction with the times in which the law was introduced. The social circumstances of the Arab life, through culture, habits and economy were effective in Islamic law which primarily aimed, at the first stage, to meet Arab requirements. Mohammad Talaat Al-Ghunaimi, The Muslim Conception of International Law and Western Approach (1968), pp. 3–4. According to one writer, the most important aspects
of the general philosophies of both systems and their jurisprudential value. It presents several significant principles of Islamic international law having important aims for the maintenance of international peace and the promulgation of justice. These include the principles of neighbourhood, regional, international and universal co-operation. The chapter also has a leading function in the presentation of some of the issues arising from the misinterpretation of both systems within the international legal and political community as a whole. The study of Islamic international law does not mean and should not, necessarily, be interpreted as a state having rules and provisions of Islamic nature, but may also be cognizant of the provisions of Islamic international law for solving the contemporary issues of international relations. However, one should not ignore the fact that the studies of different laws of nations are the cornerstones of the evolution and development of the system of public international law and the way in which peace and justice may be consolidated owing to the provisions of the Charter of the United Nations. The United Nations Charter emphasizes that the purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

of Arab life at the time included ‘the widespread disintegration among the Arabs with every clan or tribe, as the case may be, claiming complete independence and fully independent status vis-à-vis the other clans or tribes, and . . . war as the ultimate resort for settling disputes. In other words, the clannish spirit was overwhelming international relations among the Arabs, if we may use the term international in this context. From this point of view we could say that the chief purpose of Muslim international law was to mitigate, if not to banish, egoistical feelings and preach—as a substitute—fraternity, peace and security. This inference might suggest that both Muslim and Western international law have common ends.’ Id., p. 4. It must nevertheless be emphasised that ‘Muslim history and though were not always or necessarily identical with Arab history and thought, because when the Arabs, through their conquests, came into direct contact with the Greeks and the Persians they were influenced by both . . . culture, and Islamic civilization reflected that influence.’ Id., p. 5.

These principles must be regarded as some of the most important principles in the creation of international peace, justice and security.